

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DEMARIO EDWARD REED,

Plaintiff,

v.

E. DESANTIAGO, *et al.*,

Defendants.

Case No. 2:23-cv-00654-GMN-EJY

ORDER

Plaintiff Demario Edward Reed brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while in custody of the Nevada Department of Corrections. (ECF No. 1-1). On May 2, 2023, this Court ordered Plaintiff to file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee on or before May 31, 2023. (ECF No. 3). The Court warned Plaintiff that the action could be dismissed if he failed to file a fully complete application to proceed *in forma pauperis* with all three documents or pay the full \$402 filing fee for a civil action by that deadline. (*Id.* at 1-2). That deadline expired and Plaintiff did not file a fully complete application to proceed *in forma pauperis*, pay the full \$402 filing fee, or otherwise respond.

I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to

1 keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th
2 Cir. 1987) (dismissal for failure to comply with court order). In determining whether to
3 dismiss an action on one of these grounds, the Court must consider: (1) the public's
4 interest in expeditious resolution of litigation; (2) the Court's need to manage its docket;
5 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
6 cases on their merits; and (5) the availability of less drastic alternatives. See *In re*
7 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
8 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

9 The first two factors, the public's interest in expeditiously resolving this litigation
10 and the Court's interest in managing its docket, weigh in favor of dismissal of Plaintiff's
11 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
12 because a presumption of injury arises from the occurrence of unreasonable delay in filing
13 a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542
14 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
15 cases on their merits—is greatly outweighed by the factors favoring dismissal.

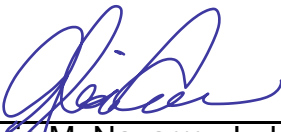
16 The fifth factor requires the Court to consider whether less drastic alternatives can
17 be used to correct the party's failure that brought about the Court's need to consider
18 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
19 that considering less drastic alternatives *before* the party has disobeyed a court order
20 does not satisfy this factor); accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
21 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
22 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's
23 order as satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled
24 with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*).
25 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
26 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779
27 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until
28 and unless Plaintiff either files a fully complete application to proceed *in forma pauperis*

1 or pays the \$402 filing fee for a civil action, the only alternative is to enter a second order
2 setting another deadline. But the reality of repeating an ignored order is that it often only
3 delays the inevitable and squanders the Court's finite resources. The circumstances here
4 do not indicate that this case will be an exception: there is no hint that Plaintiff needs
5 additional time or evidence that he did not receive the Court's order. Setting another
6 deadline is not a meaningful alternative given these circumstances. So the fifth factor
7 favors dismissal.

8 **II. CONCLUSION**

9 Having thoroughly considered these dismissal factors, the Court finds that they
10 weigh in favor of dismissal. It is therefore ordered that this action is dismissed without
11 prejudice based on Plaintiff's failure to file a fully complete application to proceed *in forma*
12 *pauperis* or pay the full \$402 filing fee in compliance with this Court's May 2, 2023, order.
13 The Clerk of Court is directed to enter judgment accordingly and close this case. No other
14 documents may be filed in this now-closed case. If Plaintiff wishes to pursue his claims,
15 he must file a complaint in a new case.

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17 DATED THIS 22 day of June 2023.

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21 Gloria M. Navarro, Judge
22 United States District Court
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